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September 11, 2018

BY ECF

The Honorable William H. Pauley III
United States District Court, S.D.N.Y.
500 Pearl Street
New York, NY 10007

MEMO ENDORSED

Re: Cengage Learning, Inc. v. Book Dog Books, LLC, No. 16-cv-7123-WHP-GWG, John Wiley & Sons, Inc. v. Book Dog Books, LLC, No. 13-cv-816-WHP-GWG

Dear Judge Pauley:

We write on behalf of Defendants. Defendants respectfully request that they be permitted to continue to possess 100 potentially counterfeit copies of books published by Plaintiffs that Defendants use to train employees in counterfeit detection. The books will be specially marked, kept separate from inventory, and never offered for sale. Defendants will provide Plaintiffs with a list of these 100 training books. Plaintiffs consent to this request.

The August 17, 2018 Final Judgment and Permanent Injunction requires Defendants to “surrender to Plaintiffs all textbooks currently within Defendants’ possession, custody, or control that Defendants suspect are or may be counterfeits of textbooks published by Plaintiffs.” With the exception of training books, by the end of this week, Defendants will have shipped all such books to Plaintiffs.

As was the subject of lengthy testimony at trial, the differences between authentic and counterfeit textbooks are often subtle. During Defendants’ anti-counterfeit training, Defendants compare authentic and potentially counterfeit copies of the same title to each other so that Defendants’ employees can learn how to identify characteristics of counterfeit books. In addition, Defendants’ employees are given multiple copies of the same title and asked to identify which are authentic and which are potentially counterfeit. Without potentially counterfeit copies of Plaintiffs’ textbooks, it will be impossible for Defendants’ employees to practice identifying potential counterfeit books and extremely difficult to train Defendants’ employees.

Thus, Defendants request that they be permitted to continue to possess 100 potentially counterfeit copies of textbooks published by Plaintiffs that Defendants use for anti-counterfeit training. All such books will be marked with a label that reads as follows: “For training purposes only. Not for sale.” (The label will not identify the books as potentially counterfeit because such a label would prevent the books from used to test employees to see whether they can

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identify the book as counterfeit. Similar labels will be affixed to authentic books used for training so that the labels do not reveal which books are potentially counterfeit.)

Respectfully submitted,

/s/ Evan Mandel

Evan Mandel

cc: Counsel of Record (via ECF)

Application granted.

Dated: September 13, 2018
New York, New York

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.